

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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SAMAAD BISHOP,

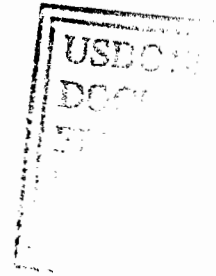
Plaintiff,

-v.-

TOYS R US, ET AL.,

Defendants.
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GABRIEL W. GORENSTEIN, UNITED STATES MAGISTRATE JUDGE



ORDER

04 Civ. 9403 (PKC) (GWG)

The Court is in receipt of letters dated November 14 and 16, 2007 from plaintiff and a letter dated November 15, 2007 from defendant Toys R Us.

The Court's order in this case requiring Toys R Us to produce documents relating to its receipt verification policy was directed at materials in Toys R Us's possession. It appears that Toys R Us has provided any crime statistics in its possession. Should Toys R Us attempt in the future to introduce – at a summary judgment or at trial – material that came into its possession after the close of discovery through a FOIL request, plaintiff may, if he wishes, attempt to obtain an order from the Court precluding the introduction of such evidence (or, in the alternative, might seek leave to allow his expert to amend his report to take into account such statistics). However, the Court will not hold up this case for an indeterminate period by waiting for a response to defendant's FOIL request.

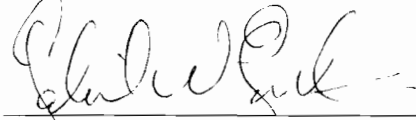
Plaintiff also seeks to question Mr. DeBlassi regarding certain topic areas. The premise for plaintiff's request is that Mr. DeBlassi was originally produced as a Rule 30(b)(6) witness. But, as has previously been noted during a conference, plaintiff did not properly alert defendants the first time around that Mr. DeBlassi's testimony was being sought pursuant to that rule. This second deposition was ordered only because certain documents in Toys R Us possession were not produced to plaintiff in time to be used during the first deposition. Accordingly, the Court will not now convert Mr. Deblassi's deposition into a Rule 30(b)(6) deposition.

That being said, the Court will permit plaintiff to ask questions in the topic areas listed in the November 14 letter. While Toys R Us will be under no duty to prepare Mr. DeBlassi as a Rule 30(b)(6) witness for such topics, Toys R Us may wish to consider whether it might not be in its interest to do so to the extent that it intends to offer any testimony in the future (on a summary judgment motion or at trial) with respect to these topic areas.

The time period for the deposition is extended to three hours.

Dated: New York, New York
November 19, 2007

SO ORDERED:



GABRIEL W. GORENSTEIN

United States Magistrate Judge

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